

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 632 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

HASAMBHAI ABDULRAHIM SHAIKH

Versus

GURUDAYALSING LABHSING SADHU

Appearance:

MR RR MARSHALL for Petitioners

MR BS PATEL for Respondent No. 1 - Absent.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE C.K.BUCH

Date of decision: 18/01/99

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellants seek to challenge the award dated 30th August, 1996 awarding compensation of Rs. 4,44,650/with interest at the rate of 12 per cent per annum from the date of application till payment to the

respondent claimant, who had claimed Rs. 8 lacs by way of compensation for the injuries that he had suffered in a vehicular accident as a result of which his right hand had to be amputated at below the elbow.

2. The respondent claimant was a Sepoy in the Army for about 16 years and after his Army service from which he retired, he worked as a heavy vehicle driver with a transport company. These injuries were admittedly suffered by the claimant in the accident when he was waiting on the side of the road and the truck driven by the appellant driver dashed against him. He was carried to the Bharuch Civil Hospital and his right hand below the elbow had to be amputated by an operation. He was kept as an indoor patient there upto 3rd January, 1992 and thereafter, he was taken to the Army Hospital at Baroda and treated there as an indoor patient upto 27.1.1992. According to the claimant, he was getting a salary of Rs. 1800 per month and a monthly allowance of Rs. 400. Over and above this, he was getting two months' salary as bonus every year and an increment of Rs. 100 per year. He was, in all, drawing Rs. 2200 per month at the time of the accident.

3. The Tribunal found that on the basis of the evidence on record that the accident had occurred due to the negligence of the truck driver. It was also held that the claimant was injured and his right hand was amputated after the crush injury he suffered during the accident. The Tribunal assessed the disability at 80 per cent. Keeping in view the future prospects, the income of the claimant was worked out at Rs. 3200 per month for awarding the compensation and on the basis that he was 44 years of age at the time of accident, a multiplier of 12 was applied. An amount of Rs. 50,000 was awarded under the head of pain, shock and suffering and thus a total amount of Rs. 4,44,650/- was awarded by way of compensation to the claimant.

4. The learned Counsel appearing for the appellant strongly contended before us that the award was excessive and that the Tribunal had worked out the loss of income on an erroneous footing. It was also submitted that the permanent disability worked out at 80 per cent was on higher side. It has come in evidence that the respondent claimant had worked as a Sepoy in the Army and after his retirement, he was at the relevant time, plying heavy vehicles. He was having a driving licence for heavy vehicles and was engaged by a transport company on a monthly salary of Rs. 1800 and allowances of Rs. 400 per month. The claimant was a right hander and by loss

of his right hand, he was totally incapacitated from working as a heavy vehicle driver, which was his regular vocation after his retirement from Army. The prospects of a retired Sepoy from the Army with his right hand amputated in an accident become dismal and he would perhaps not even be engaged as a Watchman. Therefore, permanent disability which was worked out at 80% for computing his earning capacity is in no way unjust. In fact, the assessment of permanent disability of 80 per cent is proper and warranted by the evidence on record.

5. So far as the income of the claimant is concerned, the Tribunal took in to account his future prospects on the basis that as a driver of heavy vehicles, he was already drawing Rs. 2200 at the time of the accident and worked out the datum figure at Rs. 3200 per month.

The learned Counsel submitted that the claimant had already retired from active Army service and his future prospects should be viewed only from the angle of prospect of a person who has already retired. A soldier who has retired at a young age after valiant service for the country can always look forward to engage himself in a promising job for earning income during the rest of his active life and there is no need to fossilize his prospects just because he had served the country and retired early under the Army Rules. The amount of Rs. 3200 which was worked out as a datum figure on the basis of his earnings at the time of his accident is in no way excessive and the Tribunal has rightly viewed the future prospects of a higher income on the basis that he was hardly 44 years of age at the time of the accident. In fact, the Tribunal has applied a conservative multiplier of 12 and worked out the amount. We do not find any flaw in the impugned award and in our opinion, the amount worked out is in no way excessive. Even the amount of Rs. 50,000 under the head of pain, shock and suffering is justified in the facts and circumstances of the case. The appeal is therefore, summarily dismissed.

*/Mohandas